

**Remarks**

The foregoing amendments and following remarks are responsive to the November 29, 2007 Office Action.

**Status of the Claims**

Claims 21, 23-25, 27-35 and 37-38 are amended. Claims 26 and 39-41 are cancelled (Claims 1-20 were previously cancelled). Claims 21-25 and 27-38 are pending.

**Support for Amendments**

Support for the amendments to Claims 21, 24-25, 31, 34-35 and 37-38 is found in the specification on page 4, lines 29-30; page 7, lines 6-7 and 9-12; page 13, line 14; and page 27, lines 9-10. Support for the amendments to Claims 27-28 and 33 is found on page 26, lines 21-22; page 27, line 23; and page 28, lines 12-25. No new matter is added.

**Rejections under 35 U.S.C. § 112, second paragraph**

Claims 21-33 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. In view of the foregoing amendments to the claims, which are believed to render the rejection moot, reconsideration and withdrawal of the rejections are respectfully requested.

**Double Patenting Rejection/Terminal Disclaimer**

Claims 21, 23-24, 26-28, 34, 36-37 and 39 were rejected on the ground of non-statutory obviousness-type double patenting over Claims 1, 4-5, and 7-8 of U.S. Patent No. 7,285,283 (Baumoeller) in view of U.S. Patent No. 4,305,936 (Klein).

In the event that allowable subject matter is found with respect to the application, Applicants reserve the right to submit a Terminal Disclaimer under 37 C.F.R. § 1.321(c), if deemed necessary, with respect to U.S. Patent No. 7,285,283.

Rejections under 35 U.S.C. § 103(a)

Claims 21-41 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,482,418 (Loehl) and U.S. Patent No. 6,264,961 (Ansmann) in view of U.S. Patent No. 5,989,527 (Siegfried) and U.S. Patent No. 4,305,936 (Klein). Claim 21 (from which Claims 22-25 and 27-33 depend) and Claim 34 (from which Claims 35-38 depend) are amended to clarify the invention. Claims 26 and 39-41 are cancelled.

Loehl relates to cosmetic and/or pharmaceutical preparations comprising a dialkyl carbonate, as a replacement for silicone oils, and an emulsifier. The emulsifier may include polyglycerol poly-12-hydroxystearate or cocamidopropyl betaine. Loehl does not disclose a water-in-oil emulsion, as correctly asserted by the Examiner.

Ansmann relates to oil in water emulsifiers that include alkyl and/or alkenyl oligoglycosides, fatty acid N-alkyl polyhydroxyalkylamides, and/or acyl glutamates, and polyol polyhydroxystearates, for example, polyglycerol poly-12-hydroxystearates, but does not disclose a water-in-oil emulsion, as correctly asserted by the Examiner.

Siegfried relates to compositions and methods for improving the performance of several agents, including sunless tanning agents. The oil-in-water, or water-in-oil compositions include a polyester and an active ingredient.

Klein relates to topical corticosteroid formulations, which include at least one corticosteroid, solubilizing agents (which consist essentially of a combination of at least one glyceryl ester of a fatty acid of about 6-22 carbon atoms and cocamidopropyl betaine), an alkanol cosolvent, and water. The formulation may be provided in the form of a foam in an aerosol or non-aerosol system.

To support a conclusion of obviousness, either (1) the references must expressly or impliedly suggest the claimed combination, or (2) the Examiner must present a convincing line of reasoning as to why a skilled worker would have found the claimed invention to have been obvious, in view of the teachings of the references.

With respect to Claim 21 (from which Claims 22-25 and 27-33 depend) and Claim 34 (from which Claims 35-38 depend), no such express or implied teaching exists, in either Loehl or Ansmann, or the combination thereof, in view of Siegfried and Klein, to specifically select (a) at least one polyol poly-12-hydroxystearate; (b) an oil

component; (c) at least one surfactant; (d) a UV protection factor; and (e) water, for a foamable, sun protection water-in-oil emulsion, for reasons which follow.

Despite the teaching in Loehl (col. 5, lines 21-23) that betaines and polyglycerol poly-12-hydroxystearates are preferred, there is no teaching or line of reasoning to specifically select (a) a polyglycerol poly-12-hydroxystearate to combine with (b) an oil component, (c) at least one surfactant, (d) a UV protection factor, and (e) water, to arrive at a foamable, sun protection water-in-oil emulsion as claimed, without the benefit of Applicants' disclosure. Ansmann also discloses polyglycerol poly-12-hydroxystearates, but there is also no teaching or line of reasoning to specifically select a polyglycerol poly-12-hydroxystearate to combine with components (b) to (e), to arrive at a foamable, sun protection water-in-oil emulsion as claimed, without the benefit of Applicants' disclosure.

The combination of Loehl and Ansmann also does not lead one to select components (a) to (e) as claimed. The addition of Siegfried, which discloses water-in-oil and oil-in-water emulsions, and the addition of Klein, which discloses a formulation that can produce a foam in the form of an aerosol or non-aerosol system, also does not lead one skilled in the art to specifically select components (a) to (e), to arrive at a foamable, sun protection water-in-oil emulsion as claimed.

The Examiner has cited four references, each of which includes one or more components of Applicants' invention, and selected and combined the components in an effort to support the conclusion of obviousness, yet neither of the primary references, Loehl or Ansmann, or the combination thereof, teaches or suggests a water-in-oil emulsion with components (a) to (e) as claimed. The addition of Siegfried and Klein does not remedy the deficiencies of Loehl and/or Ansmann.

The reasons provided by the Examiner to support the allegation of obviousness are (1) that it would have been obvious to combine Loehl, Ansmann, and Siegfried to include a w/o emulsion, and (2) that it would have been obvious to combine Loehl, Ansmann, and Klein to include the composition in the form of a foam dispensed by a dispenser. If one skilled in the art had the foresight to select at least one polyol poly-12-hydroxystearate, then one skilled in the art would have also needed the foresight to

combine a polyol poly-12-hydroxystearate specifically with (b) an oil component; (c) at least one surfactant; (d) a UV protection factor; and (e) water, to arrive at the invention as claimed, while excluding all other components of the cited references.

The reasons provided by the Examiner fail to adequately explain why it would have been obvious, to one skilled in the art, after reading Loehl and Ansmann, in combination with Siegfried and Klein, in attempting to prepare a foamable, sun protection water-in-oil emulsion, to selectively pick and choose among the numerous components of the cited references, and arrive at the particular combination of components (a) to (e) as in Claims 21 and 34 with any reasonable expectation of success. The only apparent reason for combining the references appears to be based on Applicants' disclosure.

Therefore, since one skilled in the art at the time of the invention would not have found it obvious, after reading Loehl and Ansmann, either individually or in combination, in view of Siegfried and Klein, to arrive at the invention with any reasonable expectation of success, the rejection should be withdrawn. Reconsideration and withdrawal of the rejection are respectfully requested.

Fees

No fees are believed due. The Commissioner is authorized, however, to charge any fees deemed due (or credit any balance owing) to Deposit Account No. 50-1177.

Conclusion

It is respectfully submitted that Claims 21-25 and 27-38 are in condition for allowance. A Notice of Allowance is respectfully requested. If anything further is needed to advance the allowance of this application, the Examiner is requested to contact Applicants' attorney at the telephone number indicated below.

Respectfully submitted,

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February 20, 2008

Date

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